

Testimony of Joseph Packtor, Esq., Attorney for the
Estate of Edward Torres Jr., Claim No. 22329
Before the Judiciary Committee
Hartford, Connecticut
March 11, 2016

Testifying in opposition to S.B. No. 416 only to the extent that it would result in additional unpardonable harm to the Estate of Edward Torres Jr. which has had a drowning claim (Claim No. 22329) languishing before the Claims Commissioner for nearly 6 years. As a matter of fundamental fairness this Claimant should be granted permission to sue, rather than being sent back before the Claims Commissioner to suffer any further delay.

My name is Joseph Packtor. I'm an attorney with the law firm of Jacobs & Dow in New Haven. I'm here to testify about S.B. 416 AN ACT VALIDATING CERTAIN STIPULATIONS TO EXTENSIONS OF TIME FOR THE CLAIMS COMMISSIONER TO DISPOSE OF A CLAIM. This bill rightly addresses jurisdictional concerns with regard to scores of claims that have been pending before the Claims Commissioner for more than two years; however, in doing so, the bill treats all such claims the same, regardless of their merit or how long they have been pending before the Claims Commissioner. I'm here to bring to the Committee's attention one such claim that has already been languishing before the Claims Commissioner for nearly 6 years, and to request the Committee to grant this claimant permission to sue, rather than to send it back before the Claims Commissioner to suffer any further delay.

My office represents the Estate of an 8 year-old boy named Edward Torres who drowned at Squantz Pond State Park in New Fairfield, Connecticut in the summer of 2009. Squantz Pond had become infamous for its number of drownings. In the summer of 2007 alone, 3 people drowned at the Park. Things had gotten so bad that, under pressure from locals and the Legislature to take action, DEP hired an aquatics expert to identify the Park's safety shortcomings and to provide a plan to reduce the risk of drowning. This expert delivered a comprehensive Safety Audit to DEP in the summer of 2008 identifying specific safety risks and recommending simple, inexpensive and commonsense measures to guard or warn against those risks. Unfortunately, in the year that followed, DEP deliberately chose not to implement any of its expert's safety recommendations, any one of which would likely have prevented Edward's death.

In August of 2010, our office filed a Notice of Claim with the Claims Commissioner's office. (Estate of Edward Torres, Jr. v. State, Claim No.: 22329) We conducted extensive discovery and the Attorney General's office sought summary judgment. Comprehensive briefs and exhibits were filed, and the matter was argued before Commissioner Vance on July 19, 2012. **More than 3 ½ years have passed since this hearing and no decision ever issued.** This inexcusable delay has heaped additional suffering on an already grieving family.

C.G.S. § 4-159a was enacted in 2001 to try to address the backlog of cases then pending before the Claims Commissioner. Section 4-159a(a)(2) requires the Claims Commissioner to report to the General Assembly on all claims that have not been disposed of within two years

of the date of filing. With regard to these cases, the General Assembly can (1) grant the Commissioner an extension of time, (2) grant the claimant permission to sue, (3) grant an award to the claimant, or (4) deny the claim. Although our claim was well past the two year mark, it was not reported to the General Assembly until last month. (See Commissioner Vance's Report dated 02/04/2016) Instead, in February 2015 Commissioner Vance asked us to sign a waiver allowing him the remainder of 2015 to dispose of our claim. We signed the requested waiver with the expectation that a decision would issue in 2015. Unfortunately no decision was ever issued.

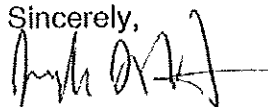
Instead, on December 1, 2015 Commissioner Vance asked us to sign another waiver for the calendar year 2016. Enough was enough. The claim had already been stagnating in the Claims Commissioner's office for far too long, much to the prejudice of the Claimant. We did not sign the 2016 waiver. We instead waited for the claim to be reported to the General Assembly where we could then seek direct permission to sue.

Complicating this matter even more, is the fact that Commissioner Vance recently resigned, effective March 4, 2016. Thus, a new Claims Commissioner will need to be appointed. Once appointed, a new Claims Commissioner will face not only a considerable learning curve, but also a substantial backlog of claims. This backlog will necessarily include those claims that were previously briefed and argued to Commissioner Vance, but were never decided. In such matters, a new Claims Commissioner will not only need to get up to speed by reviewing reams of material, but will also likely need to invite parties back for re-hearings. We are thus gravely concerned that S.B. No. 416, which applies to all claims equally, will effectively put our claim back to square one, nearly 7 years after Edward's death. In light of the maxim "justice delayed is justice denied," this cannot be allowed to occur.

Therefore, I respectfully urge this Committee to fashion a separate remedy, as it is authorized to do under § 4-159a(2), granting the Torres Estate permission to sue the State.

I and the Torres family very much appreciate for your attention and consideration. And I am happy to answer any questions you may have.

Sincerely,



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